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Couche-Tard's end of special voting rights will be closely watched by critics, defenders of dual-class share structures

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A customer enters a Couche-Tard by the Snowdon Metro station in Montreal on Sept. 4, 2019.

ANDREJ IVANOV/THE GLOBE AND MAIL

The sun will set this week on the special voting rights held by the four founders of Alimentation Couche-Tard Inc.

ATD-B-T (/investing/markets/stocks/ATD-B-T/) +2.04% ▲ , leaving the Canadian convenience store giant more exposed to investor pressure than ever before. Its fate will be closely watched by both critics and defenders of dual class share structures.

Laval, Que.-based Couche-Tard is one of Canada’s biggest companies, with a current market capitalization of $50.6-billion. It’s controlled by executive chairman Alain Bouchard and three other founders through a special class of stock that gives them 10 votes for every share they own. A so-called sunset clause – put in place in 1995 when the founders were in their 30s and 40s – says those super-voting rights will end when the youngest of them turns 65 or dies.

That clause will be triggered on Dec. 8, when the youngest founder, Jacques D’Amours, celebrates his birthday. The company’s two classes of shares will subsequently become one class, with uniform voting power. All of the company’s Class B shares will be delisted from the TSX at the close of trading on Dec. 7, and only Class A shares will trade at open the next day under the same ticker, ATD, Couche-Tard said Friday evening in an update on the process.

Mr. Bouchard, who grew up living in a trailer with five siblings and climbed from poverty to become one of Canada’s richest men through his corner store empire, has said that while this is an important moment in Couche-Tard’s history, the end of the company’s dual class share structure is largely a “non-event” for its operations. In his view, Couche’s continued strong performance will help keep any activist investors at bay, while its sheer size will limit the number of companies that could raise the amount of money needed to mount a hostile takeover attempt.

Alimentation Couche-Tard CEO optimistic worst of labour shortages is behind company

Bullish on Alimentation Couche-Tard Inc.

“We have been planning for this for some time,” Mr. Bouchard said in the update. He added that the founders will remain as directors and stay closely involved in the organization. “My commitment and leadership of the business will not change, and I am more confident than ever before that our size, our winning culture and strategy, and the structures that we have put in place … will serve the business well.”

There is more at stake, however, than the emotions of the founders, all of whom are now billionaires as a result of the company's share price appreciation over the years. At a time when dual class share structures have once again come under scrutiny – a result of the family battle at Rogers Communications Inc. – what happens to Couche-Tard in the months and years ahead could have broader repercussions for the Canadian corporate landscape, observers say.

The number of companies adopting dual class share structures in both Canada and the United States is rising, even as governance experts continue to warn about the drawbacks of such systems. Critics say dual class shares can entrench a company's leadership when it performs poorly, by limiting the power of shareholders to vote in new directors.

More companies with dual class systems listed on the TSX in the first nine months of 2021 than in the prior two years combined, according to data from the TMX Group.

In Canada, companies that unwind their dual class share structures are "really rare," said Catherine McCall, executive director of the Canadian Coalition for Good Governance (CCGG). She said what happens at Couche-Tard will be a petri dish experiment that will show how things can unfold for other companies. Her organization represents 54 major institutional investors in Canada, which collectively manage $5-trillion in assets.

The results at Couche-Tard could fuel arguments on both sides of the dual class share debate, Ms. McCall said. "If there are issues with control, then the people that are very much in favour of dual class shares are going to say 'we told you so.' And especially in Quebec, that's an issue."

All four founders have been selling some of their stakes in the company this year as the sunset date approaches.

Regulatory filings show Mr. Bouchard sold 6.35-million subordinate voting shares directly back to the company on Oct. 8 for $300-million. He still owns 123.2 million shares worth about $5.9-billion at Friday's closing prices.

Mr. D'Amours has sold 3.47 million shares this year for $166.1-million. He still owns 60.2 million shares worth about $2.9-billion.

Richard Fortin sold just under two million shares in September for $96.4-million. He still owns 31.8 million shares worth just over $1.5-billion. And Réal Plourde sold just under 1.23-million shares for $58.7-million, most in late September. He still owns just under 21.4 million shares worth just over $1-billion.

Together, the four founders own 22 per cent of the company’s equity, and they will continue to have 66 per cent of its voting rights while the multiple-voting system still exists. After their special rights expire, that stake, in combination with the support of friendly shareholders such as the Caisse de dépôt et placement du Québec, will still give them “almost a blockage type of group if there’s something we don’t like,” Mr. Bouchard has said.

While that might be true, Couche-Tard will lose the immunity it had against unsolicited bids when the dual class system is dissolved, said François Dauphin, chief executive of Montreal’s Institute for Governance of Private and Public Organizations.

More generally, the company will be more vulnerable to external pressure than it has ever been, he added. For example, institutional investors or proxy advisory firms could press Couche-Tard to change elements of its governance and it will have to respond. Already, the company has signalled it will move to taking analyst questions in real time on its quarterly calls instead of compiling their queries in advance.

“Some people will be happy about this,” Mr. Dauphin said of the move to a single class of shares. “We will see in a few years. If we lose a company like Couche-Tard due to a hostile takeover or reverse takeover by another company somewhere, we might be disappointed.”

In 2016, the founders proposed extending their voting rights, but the company cancelled a shareholder vote on the proposal at the last minute after concluding that it did not have the two-thirds support needed from subordinate shareholders. Behind the scenes, investors expressed uneasiness about the founders’ children inheriting control of Couche-Tard.

Mr. Bouchard took the rejection personally. But time, and the company’s growth since then, appear to have healed what was once a raw wound.

Two of the founders’ children have joined the board recently – a sign the owners are preparing their succession. Karinne Bouchard, a corporate director who cut her teeth as the company’s treasurer between 2013 and this year, was elected at the annual meeting in September. Eric Fortin, who worked for Couche-Tard for 13 years and now runs his family’s investment company, was appointed a director last month after attending board meetings as an observer since 2009, the company said in its earnings news release on Nov. 23.

Couche-Tard, which means "night owl" in French, operates some 14,200 stores in 26 countries, mostly under the Circle K brand. Last year it moved to buy grocer Carrefour SA in a friendly deal, but the government of France opposed the idea and the attempt was abandoned.

The company's stock price has soared more than 900 per cent over the past decade and its annual dividend per share increased from 3.17 cents to 33.25 cents. Its cash position stood at US$3.36-billion as of Oct. 10. It could "easily add" at least US$10-billion of new debt on its balance sheet for the right acquisition, chief executive Brian Hannasch said last month.